

CAUSE NO. 22-CCV-070378

RICHARD P. JONES, ET AL.,
Plaintiffs,

v.

KARINA MARTINEZ, ET AL.,
Defendant.

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IN THE COUNTY COURT

AT LAW NO. 3

FORT BEND COUNTY, TEXAS

**NOMINAL DEFENDANTS DAVID OUBRE AND
LEWIS BRISBOIS BISGAARD & SMITH, LLP'S ORIGINAL COUNTERCLAIM**

Nominal Defendants David Oubre and Lewis Brisbois Bisgaard & Smith, LLP (collectively “Nominal Defendants”) file this *Original Counterclaim* requesting declaratory relief.

BACKGROUND

On January 7, 2022, Plaintiffs Richard P. Jones and Michael Joseph Bitgood a/k/a “Michael Easton” and sued Karina Martinez, Mariana Sullivan, Imperial Lofts, LLC alleging, in pertinent part, that Defendants improperly charged rental fees and filed eviction petitions against Plaintiffs.¹

Defendants retained Lewis Brisbois Bisgaard & Smith, LLP to defend against Plaintiffs claims. On March 11, 2022, Defendants answered Plaintiffs’ lawsuit. David Oubre of Lewis Brisbois’s Houston office appeared as Defendants’ lead counsel.²

On May 16, 2022, Plaintiffs moved under Rule 12 of the Texas Rules of Civil Procedure arguing that Lewis Brisbois is defending this case “without any legal authority whatsoever” and demanding the court disqualify Mr. Oubre and Lewis Brisbois.³

¹ Pls.’ Orig. Pet

² Defs.’ Orig. Answer

³ Pls.’ Mot. to Show Authority, dated May 16, 2022.

On June 14, 2022, Defendants responded in opposition to Plaintiffs' Rule 12 motion and, in support of their response, Martinez, Sullivan, and Imperial Lofts' General Counsel, Thomas Larson each submitted a signed and notarized affidavit confirming that Mr. Oubre and Lewis Brisbois have authority to represent them in this matter

On June 15, 2022, Plaintiffs amended their petition to assert claims against Mr. Oubre personally.⁸ On June 24, 2022, Plaintiffs filed their fourth amended petition, the operative pleading, asserting claims against Lewis Brisbois.⁹ To-date, however, neither Lewis Brisbois nor Mr. Oubre have received service of process, and neither Lewis Brisbois nor Mr. Oubre have answered or otherwise appeared as parties in this lawsuit.

On July 8, 2022, Defendants filed an amended response, again attaching Defendants' signed and notarized affidavits.¹⁰ In their amended response, Defendants stated—as Defendants stated in their initial response—that, “[o]n March 11, 2022, Lewis Brisbois, Bisgaard & Smith, LLP... filed an answer of behalf of Defendants. ... **Mr. David A. Oubre is lead counsel on this case,**” and “**Defendants consent and are fully aware of Mr. Oubre’s and Lewis Brisbois’ representation in this case.**”¹¹

On July 12, 2022, Plaintiffs filed an amended reply in support of their Rule 12 motion, alleging, among other things, that:

On July 8TH 2022 ... David Oubre ... named defendant[] herein, filed an instrument entitled “amended response to Plaintiff’s motion to show authority”, purporting to show authority to represent Imperial Lofts LLC, Madam Sullivan, and Karina Martinez, parties that, as a matter of law, they do not, nor have they ever represented.¹²

...

Having stated the foregoing, both counsel are named defendants in this case; both continue to use the Plaintiff’s LLP to sign pleadings; and both, have made a general voluntary appearance for themselves as well as the California “chapter” of a law firm that bears the same name as Plaintiff’s LLP, but is not authorized to do business in Texas.¹³

This Court referred Plaintiffs' Rule 12 motion to Associate Judge Lewis on August 19, 2022.¹⁴ The Associate Judge held an oral hearing of Plaintiffs' Rule 12 motion on September 13, 2022. Following the hearing, the Associate Judge decided to grant Plaintiffs' motion to show authority and remove Mr. Oubre and Lewis Brisbois as Defendants' counsel,¹⁵ and to "tak[e] judicial notice of the contents of the Court's file, and tak[e] judicial notice of the voluntary appearance of defendants, Oubre and LEWIS BISGAARD & SMITH, LLP ... on July 8th, 2022."¹⁶ In a separate decision also dated September 13, 2022, the Associate Judge decided to "take[] judicial notice of ... [t]he contents of the Court's file."¹⁷

On September 20, 2022, Nominal Defendants appealed and requested this Court reverse the Associate Judge's decisions of September 13, 2022.

On September 27, 2022, Plaintiffs filed a notice requesting the Associate Judge enter purportedly overdue findings of fact and conclusions of law pertaining to the Associate Judge's decisions of September 13, 2022. Notably, Plaintiffs failed to serve their notice on Nominal Defendants or the undersigned counsel. The Associate Judge entered Plaintiffs' findings of fact and conclusions of law on September 27, 2022.¹⁸ Like Plaintiffs, the Associate Judge did not serve on Nominal Defendants or the undersigned counsel the order entering Plaintiffs' findings of fact and conclusions of law.

Accordingly, and subject to their special appearance and appeal of the Associate Judge's decisions of September 13, 2022, Nominal Defendants, David Oubre and Lewis Brisbois appeal to this Court and request reversal of the Associate Judge's decision of September 27, 2022, as chapter 54A of the Texas Government Code permits.

CAUSE OF ACTION – REQUEST FOR A DECLARATORY RELIEF

Pursuant to Section 37.003 et seq. of the Texas Civil Practice and Remedies Code, the Nominal Defendants request the court declare:

1. David Oubre is authorized to practice law in Texas; and
2. Lewis Brisbois Bisgaard & Smith, LLP is authorized to do business in Texas.

ATTORNEYS' FEES

Oubre seeks and is entitled to recover its reasonable and necessary attorneys' fees and costs pursuant to Texas Civil Practice and Remedies Code Section 37.009.

PRAYER

Nominal Defendants respectfully requests the Court award declaratory relief, attorneys' fees and any other relief, at law or in equity, to which Oubre may be justly entitled.

Dated: October 6, 2022

Respectfully submitted,

Lewis Brisbois Bisgaard & Smith LLP

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**Attorneys for David A. Oubre and Lewis
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Certificate of Service

I certify a true and correct copy of the foregoing document has been served on all counsel of record by electronic filing on October 6, 2022

/s / Sean O'Neal Braun
Sean O'Neal Braun